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**3. Criminal Law (§ 814 (5)\*)—Instructions—Conformity to Indictment.**—Where the indictment merely alleged illegal keeping of liquors as defined by Acts 1916, c. 146, § 3, instruction that if any liquor was found at defendant's place, and such place was a house of ill repute, the jury might convict, was error.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 717.]

Error to Corporation Court, City of Hopewell.

E. L. Lane was convicted of violation of the prohibition law, and he brings error. Reversed.

*Robert G. Hundley*, of Hopewell, and *C. H. Morrisette*, of Lexington, for plaintiff in error.

*The Attorney General*, for the Commonwealth.

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WISE et al. v. COMMONWEALTH et al.

March 28, 1918.

[95 S. E. 632.]

**1. Taxation (§ 83\*)—Wills (§ 573 (2)\*)—Gift of Income for Life.**—A gift to one for life of the entire income and interest to be derived from a trust fund is a gift of a life estate in the fund, the quantity of the estate being the same no matter by what name it is called, and to such quantity of estate the tax laws apply irrespective of the interposition of a formal trustee to collect and pay over the income.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 88; 16 Va.-W. Va. Enc. Dig. 1288.]

**2. Taxation (§ 98\*)—Life Tenant of Trust Fund—Statute.**—Where a married woman, the holder of an estate for life in the net income of a trust fund, resided in Virginia, her trustee, a nonresident, was properly chargeable in Virginia with the taxes on the fund, under Code 1904, § 492, providing that if the property is the separate property of a person over 21, or a married woman, it shall be listed and taxed to the trustee, if any they have, and, if they have no trustee, it shall be listed by and taxed to themselves, in either case in the county or corporation where they reside; it being the duty of the life tenant who receives the entire income to pay the taxes on the corpus.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 101.]

**3. Taxation (§ 98\*)—Trust Fund—Life Tenant—Residence.**—Under Code 1904, § 492, the property in which a married woman, the life tenant of a trust fund, has a life estate, is taxable at the place of her residence, without regard to the situs of the physical symbols by which such property is evidenced.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 101.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**4. Taxation (§ 493 (1\*))—Error in Assessment—Correction by Circuit Court.**—If any error to the prejudice of the trustee was committed when the commissioner of revenue assessed a trust fund on information derived from the examiner of records instead of on inquiry of the taxpayer, the assessment being to the trustee at the residence of the life tenant, the trustee had opportunity to have the error corrected by the circuit court, which had power to do all the commissioner of revenue had power or was required to do in the premises under the tax laws.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 105.]

**5. Appeal and Error (§ 671 (4\*))—Bill of Exception—Showing of Evidence—Res Judicata.**—Plaintiff's bill of exception, stating that, after certain evidence had been introduced, plaintiff moved to be exonerated from payment of taxes on the ground the court had already passed on the question in a controversy about previous taxes, and had determined that the trust funds involved were not subject to taxation in Virginia, so that the question then presented was *res judicata*, but that the court overruled the motion and refused the relief sought, did not show that there was any evidence in the record to support the ground of *res judicata* alleged, and no question of *res judicata* can arise.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 538; 5 Va.-W. Va. Enc. Dig. 386.]

Error to Circuit Court of James City and City of Williamsburg.

Motions to correct erroneous assessments of taxes on intangible personal property by Henry A. Wise, trustee, and another, against the Commonwealth of Virginia, and another. To review judgments denying the applications and dismissing the motions, applicants bring error. Affirmed.

*Henley, Hall & Hall*, of Williamsburg, for plaintiffs in error.

*J. D. Hank, Jr.*, *Atty. Gen.*, *O. L. Shewmake*, *Asst. Atty. Gen.*, and *Frank Armistead*, of Williamsburg, for defendants in error.

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TORBERT *v.* ATLANTIC COAST LINE R. CO.

March 28, 1918.

[95 S. E. 635.]

**1. Railroads (§ 481 (1\*))—Fire Near Track—Evidence.**—In an action against a railroad for setting fire to plaintiff's property, testi-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.